



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

Office of the Inspector General, Petitioner

vs.

DECISION

Case #: FOF - 161050

██████████ Respondent

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Pursuant to a petition filed October 15, 2014, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of ten years, a hearing was held on November 18, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Representative: Megan Ryan, Fraud Investigator

Office of the Inspector General  
Department of Health Services - OIG  
PO Box 309  
Madison, WI 53701

Respondent:

██████████  
██████████  
██████████

█

**ADMINISTRATIVE LAW JUDGE:**

Mayumi Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The respondent (CARES # ██████████) received FoodShare benefits in Milwaukee County from December 27, 2011 through October 31, 2013. (Exhibit 10)
2. On December 27, 2011, the Respondent completed an on-line ACCESS application for FoodShare benefits, in which she claimed to be homeless, but listed a mailing address on Nash Street in Milwaukee, Wisconsin. (Exhibit 3)
3. On February 22, 2012, the Respondent electronically signed an application summary, indicating that she was homeless, but listing a mailing address on ██████████ in Milwaukee, Wisconsin. (Exhibit 4)

4. On June 6, 2012, the Respondent electronically signed an application summary, indicating that she was homeless, but listing a mailing address on [REDACTED] in Milwaukee, Wisconsin. (Exhibit 5)
5. On March 25, 2013, the Respondent completed an on-line ACCESS application for FoodShare benefits, indicating that she was homeless, but living at an address on [REDACTED] in Milwaukee, Wisconsin. (Exhibit 15)
6. On October 15, 2014, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the Respondent, "provided false information in order to received SNAP benefits that she was not eligible for." (Exhibit 1)

## DISCUSSION

### *Respondent's Non-appearance*

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

*If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

*Emphasis added*

The hearing in this case took place on November 18, 2014. OIG sent the Respondent an Administrative Disqualification Hearing Notice to an address on [REDACTED] Wisconsin, which Ms. Ryan indicated was the Respondent's last known address. Ms. Ryan indicated that the notice was returned to OIG as undeliverable with no forwarding address. According to Ms. Ryan, it is OIG's protocol to do nothing in these circumstances, but she made an exception in this case, checking the Social Security database and conducting a general Google Search for the Respondent. Ms. Ryan indicated that she was still unable to locate an alternate address for the Respondent.

Per 7 C.F.R §273.16(e)(4), above, if the household member cannot be located, the hearing shall be conducted without the household member being present. This means that some due diligence is required to locate the household member and serve them with notice of the hearing. Indeed, in order to say you are unable to locate a person, you have to have made an effort to find them. OIG made a minimal and unsuccessful attempt to locate the Respondent. Consequently, the hearing was conducted in the Respondent's absence.

It should be noted that unsuccessful attempts were made to contact the Respondent at [REDACTED] and at ([REDACTED]) the phone number last known to the agency.

It should also be noted that a copy of this decision will be sent to the Respondent at the [REDACTED] address, since it would appear to post-date the Petitioner's address on [REDACTED], at least according to the exhibits provided by OIG. **The Respondent has 30 days from the date of this decision to contact the Division of Hearings and Appeals and request a new hearing, based upon the non-receipt of the Administrative Disqualification Hearing Notice.**

### *What is an Intentional Program Violation?*

7 C.F.R. §273.16(c) states that Intentional Program Violations shall consist of having intentionally:

- 1) Made a false or misleading statement or misrepresented facts; or

- 2) Committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization card or any other reusable documents used as part of an automated delivery system (access device).

The Department's written policy restates federal law, below:

### **3.14.1 IPV Disqualification**

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

*FoodShare Wisconsin Handbook, §3.14.1.*

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

### *What is OIG's burden of Proof?*

In order for the agency to establish that a FoodShare recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" (a.k.a. "more likely than not") used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though, there may exist a reasonable doubt that the elements have been shown.

#### *The Merits of OIG’s Claim*

In the case at hand, OIG asserts that the Respondent lied about her residence in order to receive dual food stamp benefits in Wisconsin and Missouri, between December 2011 and October 2013.

Per 7 C.F.R. §273.16(b)(5), “an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.” *See also FoodShare Wisconsin Handbook*, § 3.14.12

Exhibit 10 is a Confirmed Assistance Group Eligibility History printout from the CARES data base. It is reliable as a regularly kept business record of the Wisconsin Department of Health Services. Exhibit 10 shows that the Respondent was approved for and received FoodShare benefits between December 2011 and October 2013.

In order to prove that the Respondent was also receiving food stamps in Missouri during this almost two year period, OIG relies upon an e-mail from a partially identified State of Missouri employee, responding to Ms. Ryan’s October 17, 2013 inquiry into whether the Respondent was receiving dual benefits. (Exhibit 11)

Ms. Ryan identifies the Respondent by name and Social Security Number in the subject heading of her e-mail, so Missouri’s response has the same information in the subject hearing of their reply, but the content of the e-mail lacks sufficient information. Rather than attaching a full screen print out similar to Exhibit 10, the e-mail contains what might be a partial screen shot (and that is not even certain), showing the dates an individual received food stamps. However, that screen shot contains no identifying information, so it could have been cut from anyone’s case and inserted into the e-mail. Further, the dates of disbursement are not in order and jump around, which again begs the question of whether it is a partial screen print out from the State of Missouri databases. I also note that the individual discussed by the Missouri employee is referred to in the masculine, but the respondent is female.

Based upon the foregoing, it is found that Exhibit 11 is neither sufficient, nor reliable enough to establish that the Respondent received food stamp benefits in Missouri during the time in question.

Based upon the record before me, I find that OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent received dual benefits by lying about her residence.

#### **CONCLUSIONS OF LAW**

OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent committed an IPV by lying about her residence between December 2011 and October 2013, in order to receive dual benefits.

**NOW, THEREFORE,** it is

**ORDERED**

That IPV claim number [REDACTED] is hereby reversed.

**REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

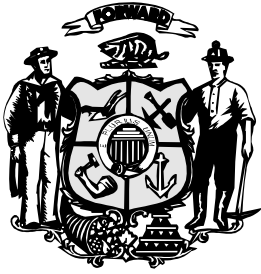
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee, Wisconsin,  
this 25th day of November, 2014.

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\sMayumi Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: Office of the Inspector General - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
Megan Ryan - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 25, 2014.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[megan.ryan@wisconsin.gov](mailto:megan.ryan@wisconsin.gov)